

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

EDWARD P. SEMULKA,

Plaintiff,

vs.

ATTORNEY ROBERT CLARK,
STATE OF PENNSYLVANIA,
WASHINGTON COUNTY DRUG
TASK FORCE,

Defendants.

Civil Action No. 2:17-cv-00846-DSC

**MOTION TO PRECLUDE
PLAINTIFF FROM FILING
FURTHER AMENDED COMPLAINTS**

Filed by the Defendant,
Robert N. Clarke, Esquire

Counsel of Record for this Defendant:

Robert J. Grimm, Esquire
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JURY TRIAL DEMANDED

ELECTRONICALLY FILED

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AND NOW, comes the Defendant, Robert N. Clarke, Esquire, incorrectly identified as Attorney Robert Clark, by and through his attorneys, Robert J. Grimm, Esquire and the law firm of Swartz Campbell, LLC, and files the instant Motion to Preclude Plaintiff from Filing Further Amended Complaints, setting forth in support thereof:

I. FACTS & PROCEDURE

1. The Plaintiff, Edward P. Semulka (hereinafter “Mr. Semulka”), filed a Complaint on June 27, 2017, along with a Motion for Leave to Proceed *In Forma Pauperis*. See Docket Entry No. 1.
2. This original Complaint, which was not timely served, named three Defendants: Attorney Robert Clark [sic] (hereinafter “Mr. Clarke”), the State of Pennsylvania, and the Washington County Drug Task Force.

3. Where Mr. Clarke is concerned, Mr. Semulka appears to be bringing a Section 1983 claim, a claim for involuntary servitude under the 13th Amendment, an ordinary negligence claim, and a legal malpractice claim.
4. Mr. Clarke filed a Motion to Dismiss Mr. Semulka's Complaint and a Brief in Support thereof on November 21, 2018. See Docket Entries Nos. 3 and 4.
5. On January 10, 2019, Mr. Semulka filed a First Amended Complaint, naming a number of new Defendants, while also filing a "Motion for Extension of Time to Answer Motion to Dismiss." See Docket Entries Nos. 6 and 7.
6. Mr. Clarke filed a Motion to Dismiss the First Amended Complaint and Brief in Support thereof on January 23, 2019. See Docket Entries Nos. 8 and 9.
7. On February 8, 2019, Mr. Semulka filed a Second Amended Complaint, again naming new Defendants and setting forth additional allegations and theories of liability. See Docket Entry No. 11.
8. On February 11, 2019, Mr. Semulka filed a Third Amended Complaint. See Docket Entry No. 13.
9. On February 14, 2019, Mr. Semulka filed a Fourth Amended Complaint. See Docket Entry No. 15.
10. These most recent amended pleadings continue to feature new Defendants and to introduce novel allegations and bases for liability.
11. Mr. Clarke now files the instant Motion pursuant to Federal Rule of Civil Procedure 7(b) and Local Rule of Civil Procedure 7(A), requesting that the Court preclude Mr. Semulka from filing any further amended pleadings in this matter

II. ARGUMENT IN SUPPORT OF MOTION

9. Federal Rule of Civil Procedure 15, which addresses the amendment of pleadings, provides, in pertinent part:

(a) Amendments Before Trial.

(1) *Amending as a Matter of Course*. A party may amend its pleading once as a matter of course within:

(A) 21 days after serving it, or

(B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.

(2) *Other Amendments*. In all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires.

Fed.R.Civ.P. 15(a).

10. As argued in Mr. Clarke's January 23, 2019 Motion to Dismiss, Mr. Semulka's First Amended Complaint was not filed in a timely fashion under the above Rule.
11. Mr. Semulka's subsequent amended pleadings—i.e., his Second, Third, and Fourth Amended Complaints—have also, arguably, been filed in an untimely fashion.
12. Of yet greater significance, Mr. Semulka has never contacted the undersigned to seek consent, nor has he formally sought this Court's leave, to file any of these amended pleadings, in essence rendering them null under Rule 15(a)(2).
13. The lack of timeliness and other procedural improprieties aside, the real concern is that Mr. Semulka has fallen into a pattern of filing amended pleading after amended pleading, with seemingly no end in sight.
14. Each amended pleading eclipses the preceding amended pleading, adding more and more parties, new causes of action or theories of liability, and detailing increasingly impertinent allegations that, on their face, defy plausibility.

15. Mr. Semulka's current practice is vexing, amounts to harassment, and is patently unfair to Mr. Clarke.
16. Without the Court's intervention, Mr. Clarke will continue to suffer a degree of prejudice that is unacceptable, even accounting for the acknowledged fact that Mr. Semulka is proceeding *pro se* in this matter.
17. Mr. Semulka must be precluded from filing any further amended pleadings so that Mr. Clarke can identify and respond to finite, concrete allegations and begin to prepare his defense to the same.
18. Accordingly, Mr. Clarke requests that this Honorable Court preclude Mr. Semulka from filing any further amended pleadings.

WHEREFORE, the Defendant, Robert N. Clarke, Esquire, respectfully requests that this Honorable Court enter the attached, proposed Order, precluding the Plaintiff, Edward P. Semulka, from filing any further amended pleadings in this matter.

Respectfully submitted,

SWARTZ CAMPBELL, LLC

/s/ Robert J. Grimm, Esquire

Robert J. Grimm, Esquire
Attorney for the Defendant,
Robert N. Clarke, Esquire

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the within **Motion to Preclude Plaintiff from Filing Further Amended Complaints** was served via regular U.S. Mail and electronically, to the following counsel on the 19th day of February, 2019:

Edward P. Semulka
148 Sherman Avenue
Etna, PA 15223
(Plaintiff)

/s/ Robert J. Grimm, Esquire
Robert J. Grimm, Esquire
Attorney for the Defendant,
Robert N. Clarke, Esquire